

CHAPTER NO. 721

HOUSE BILL NO. 3484

By Representative McMillan

Substituted for: Senate Bill No. 3429

By Senators Crutchfield, Kyle

AN ACT to amend Tennessee Code Annotated, Title 67, relative to claims for a refund of taxes.

WHEREAS, the Court of Appeals of Tennessee, in *Prodigy Services Corp., Inc. v. Johnson*, No. M2002-00918-COA-R3-CV (Tenn. Ct. App. August 12, 2003) *perm. app. denied*, has ruled that charges for Internet access are not subject to sales and use tax in Tennessee; and

WHEREAS, certain sellers of Internet access have collected sales tax from customers on charges for Internet access in accordance with an advisory notice from the Department of Revenue, and have remitted those taxes to the State; and

WHEREAS, based on the *Prodigy* decision, claims for refund may arise with respect to such taxes; and

WHEREAS, applicable statutes provide that the State shall only refund such sales tax to the taxpayer upon a showing that the taxes have been refunded to the customer from whom such tax was collected; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-1-1802, is amended by adding the following as a new subsection:

() Notwithstanding any provision of this section to the contrary, the following additional procedures shall apply to purchasers and sellers with respect to refund requests for sales tax collected by the taxpayer from customers on Internet access charges:

(1) A purchaser seeking a refund of taxes collected on charges for Internet access shall provide a written request for refund to the seller no later than sixty (60) days after the effective date of this Act; provided, however, that a request submitted via e-mail or web site in a manner designated by the seller for such purpose shall be considered a written request. This written notice must contain the information necessary to determine the validity of the request.

(2) A seller of Internet access may file a refund claim for taxes collected from customers on charges for Internet access, provided that such claim is filed no later than one hundred twenty (120) days after the effective date of this Act.

(3) No claim, cause of action, or other proceeding for a refund by the commissioner shall be permitted if the provisions of this subsection are not met. No claim, cause of action, or other proceeding by the customer shall be permitted against a seller of Internet access if a

proper request for refund is not submitted by the customer to the seller pursuant to the provisions of subdivision (1) of this subsection.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 6, 2004



JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 18th day of May 2004



PHIL BREDEBEN, GOVERNOR